

## **REMARKS**

Claims 1-34 were in the Application as filed. In a Preliminary Amendment filed with the application on November 2, 2001, Claims 1-34 were canceled and Claims 35-61 were added.

The Examiner has made a restriction requirement, restricting the Claims into two groups, with Group I comprising Claims 35-51 and Group II comprising Claims 52-61.

### **1. Restriction Requirement**

To further business interests, Applicants have elected the Claims in Group I, *i.e.*, Claims 35-51, without traverse. Claims 52-61 are canceled herein without prejudice in view of the present restriction requirement. Applicants reserve the right to prosecute these claims in one or more Divisional Applications.

### **2. Species Election**

Within Elected Group I, the Examiner asserts that there are several patentably distinct species. Within this group, the Examiner asserts that the following claims sets represent distinct species:

- a. **Species (1) and (2), represented by Claims 37 and 38, respectively, with claims as 35, 36, and 39-50 identified as generic claims.**
- b. **Species (3) and (4), represented by Claims 40 and 41, respectively, with claims as 35-39 and 42-50 identified as generic claims.**
- c. **Species (6), (7), and (8), represented by Claims 48, 49 and 50, respectively, with claims 35-47 and 51 identified as generic claims.**

No species (5) is identified within the Claims of Group I.

#### **a. Species (1) and (2)**

To further business interests, Applicants elect Species (1), wherein the flap region of the invader oligonucleotide is capable of specifically hybridizing to the target polynucleotide, for prosecution in the event that no generic claim is found to be allowable. If one or more generic claims are found to be allowable, Applicants reserve the right to consideration of Species (2) and/or additional species.

Claims 35-37 and 39-51 are readable on the Species (1).

**b. Species (3) and (4)**

Applicants traverse the Examiner's assertion that Species (3) and (4), represented by Claims 40 and 41, respectively, represent distinct species. For claims to be restricted to different species, they must be mutually exclusive. MPEP 806.04(f). Species are always specifically different embodiments. MPEP 806.04(f). This is not the case of Claims 40 and 41. Claim 41 depends from Claim 40. Thus, the embodiments of Claim 40 comprise the embodiments of Claim 41, and thus these embodiments cannot be "mutually exclusive".

Applicants elect, with traverse for the reasons recited above, Species (3), wherein the specific behavior as a function of time is non-linear. If one or more generic claims are found to be allowable, Applicants reserve the right to consideration of Species (4) and/or additional species.

Claims 35-51 are readable on the elected species.

**c. Species (6), (7), and (8)**

To further business interests, Applicants elect Species (6), wherein the determination of whether the signal exhibits a specific behavior as a function of time is performed in real time, for prosecution in the event that no generic claim is found to be allowable. If one or more generic claims are found to be allowable, Applicants reserve the right to consideration of Species (7), (8) and/or additional species.

Claims 35-47 and 49-51 are readable on the Species (6).

**3. Claims Copied to Provoke an Interference**

Applicants' Claims 35-50 have been copied in order to provoke an interference. Applicants copied claims 1-13 from PCT Appln. No. PCT/US01/09579, published as WO

01/73127 A2, ("127") and claiming priority to U.S. Provisional Appln. 60/192,606 ("606"). On May 29, 2003, a U.S. application related to the '606 application, Appln. Ser No. 09/816,150 ("150"), was published as US 2003/0099941 A1. This application contains the same claims as the '127 publication and is currently in prosecution with Examiner Jeffrey Norman Fredman, in Group Art Unit 1634 (as indicated by a search of the USPTO PAIR database on August 8, 2003).

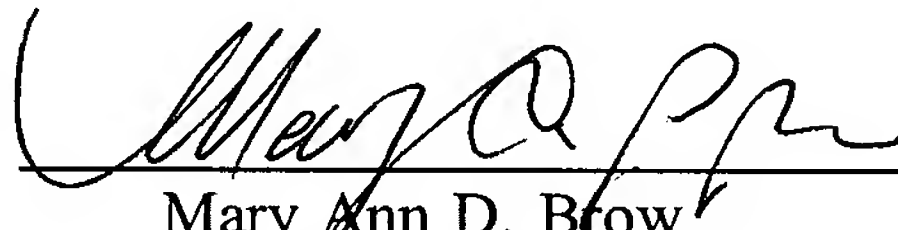
Claims 1-13 of Appln. Ser No. 09/816,150 correspond to the Applicants' Claims 35-50, respectively, except that multiple dependent Claim 9 of '150 has been written as dependent Claims 43-46 in the present application. The claims of the present application are intended to encompass the subject matter claimed in the '150 application and to provoke an interference proceeding with the applicants of the '150 application.

4. **Form 1449**

The present application is a continuation of U.S. 6,458,535 (09/350,597). A Form PTO-1449 containing the references from the Forms 1449 of the parent application is enclosed herewith for consideration by the Examiner. Applicants request that the references on this form be printed with any application issuing from the present case. Copies of the references associated with the Form PTO-1449 are contained in the file of the parent application for the Examiner's review.

If a telephone interview would aid in the prosecution of this application, Applicants encourage the Examiner to call the undersigned collect at (608) 218-6900.

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